

BEFORE THE  
POLLUTION CONTROL HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF  
LOLA I. SISSON,

Appellant,

v.

STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY, and  
MOUNTAIN VIEW ASSOCIATION,

Respondent.

PCHB No. 82-25

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
ORDER

This matter, the appeal of an order authorizing the issuance of a ground water permit, came before the Pollution Control Hearings Board, David Akana (presiding) and Gayle Rothrock, at a formal hearing on May 24, 1982, in Lacey, Washington.

Appellant appeared pro se and was assisted by Larry Kegley, her water operator and plumber; respondent Department was represented by Rick Kirkby, Assistant Attorney General; respondent permittee was represented by Joe Pinell, part owner and representative. Court reporter Lois Fairfield recorded the proceedings.

1 Having heard the testimony, having examined the exhibits, and  
2 having considered the contentions of the parties, the Board makes these

3 FINDINGS OF FACT

4 I

5 Respondent permittee, Mountain View Association (MVA), applied for  
6 a ground water permit on October 6, 1980. The requested appropriation  
7 was for 100 gallons per minute (gpm) and 17 acre-feet (a-f) per year  
8 continuously for community domestic supply. The well is located in  
9 Section 28, Township 2 North, Range 13 EWM in Klickitat County. The  
10 water is to be used within the Sisson subdivision, Tract 20 of North  
11 Dalles Fruit and Garden Tracts, also in Section 28. There are  
12 presently 24 homes on the subdivision which consists of 30 residential  
13 lots.

14 II

15 At the time it made its application (G4-27085), MVA intended to  
16 serve up to 17 homes with domestic water. A well had already been  
17 drilled which served a group domestic system (five residences) of less  
18 than 5,000 gallons per day.<sup>1</sup> At the time of this hearing, 19 homes  
19 were being served by the system.

20 III

21 Since 1953, the entire subdivision was satisfactorily served with  
22

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23 1. RCW 90.44.050 provides an exemption from the permit requirement  
24 provided that the withdrawal does not exceed 5,000 gallons per day  
25 for a single or group domestic use. Respondent determined the use  
26 to fall within the exception at the time of the investigation.

1 domestic water by Lola Sisson under ground water certificate No.  
2 2071-A which granted 25 gpm, 22.4 a-f per year. In 1980, Lola Sisson  
3 allowed Larry Kegley to manage the water system. Since that time,  
4 some residential owners became dissatisfied with the service and  
5 treatment accorded by Mr. Kegley and proceeded to find their own  
6 source of domestic water under the name of Mountain View Association.  
7 These owners are willing to forego any rights that they may have under  
8 the Sisson certificate No. 2071-A in order to develop their own  
9 system. The consequence of this dual supply of water would be to  
10 decrease the water used under certificate 2071-A while increasing the  
11 water appropriated under a permit to be issued from application  
12 G4-27085.

#### 13 IV

14 The intended point of withdrawal is a well located on Lot 17. A  
15 portion of the lot, 11 feet by 15 feet, was provided to MVA by the lot  
16 owner for this purpose. The well, as installed, is 6 inches in  
17 diameter, 208 feet deep, with a static water level of 125 feet below  
18 land surface. It is equipped with a five-horsepower pump.

#### 19 V

20 The nearest well is the Sisson/Kegley well which is about 300 feet  
21 from the MVA well and is of similar depth. Under the situation as it  
22 exists today, the use of the MVA well will increase at the same rate  
23 as the use of the Sisson/Kegley well decreases. This result obtains  
24 because both wells serve the same subdivision.

VI

Water is physically available for appropriation in the same aquifer.

VII

From the records and experiences in the area, there has been no history of impact between domestic wells over the many years of use. There is no evidence which could show that the MVA well would physically reduce the amount of water available to the Sisson/Kegley well. In fact, water levels have risen since the 1950's.

VIII

The department does not consider the granting of a water right when a right already exists for the same land to be a beneficial use or in the public interest.

IX

Any Conclusion of Law which should be deemed a Finding of Fact is hereby adopted as such.

From these Findings, the Board comes to these

CONCLUSIONS OF LAW

I

RCW 90.44.060 makes application from ground water subject to certain provisions of chapter 90.03 RCW. RCW 90.03.290 requires the department to make four determinations before issuing a water use permit: (1) what water, if any, is available; (2) to what beneficial uses the water is to be applied; (3) will the appropriation impair existing rights; and (4) will the appropriation detrimentally affect

1 the public welfare. Stempel v. Department of Water Resources, 82  
2 Wn.2d 109, 115 (1973).

3 In addition, no ground water permit may be granted for public  
4 ground water beyond the capacity of the underground bed or formation  
5 in question to yield such water within a reasonable or feasible  
6 pumping lift. RCW 90.44.070.

7 II

8 The evidence shows that water is physically available for  
9 additional appropriations. The proposed appropriation of water will  
10 not cause the capacity of the aquifer to be exceeded beyond a  
11 reasonable or feasible pumping lift. In fact, the static water level  
12 has been increasing over the years.

13 III

14 The rate and quantity of the proposed withdrawal has not been  
15 shown to impair the rights of existing appropriators to be able to  
16 satisfy their prior water rights. The proposed withdrawal will  
17 probably detrimentally affect the business expectations of Larry  
18 Kegley, however, as there will be fewer residences to service in the  
19 same subdivision.

20 IV

21 The proposed appropriation is for community domestic use, which is  
22 a beneficial use of water. RCW 90.54.020.

23 V

24 Under the facts and circumstances, the proposed appropriation will  
25 not be detrimental to the public welfare. It will provide the means

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER  
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1 for many residents to obtain water service in a manner satisfactory to  
2 themselves and without detriment to the public interest.

3 The department's concern for multiple water rights for the same  
4 use on the same land is valid. The total amount of water withdrawn  
5 will not be materially affected, however. Also, the named  
6 appropriators differ. Lastly, the beneficiaries under the existing  
7 certificate of water right agree to forego their beneficial interest  
8 in the Kegley/Sisson system. Even so, at some future point, the water  
9 right documents must be conformed to reflect actual use. The  
10 procedure set forth in chapter 90.14 RCW may be appropriate to use at  
11 that time. Consequently, the public interest would not be  
12 detrimentally affected.

#### 13 VI

14 Appellant raises other issues which this Board has no authority or  
15 jurisdiction to determine. Those issues properly belong in another  
16 forum.

#### 17 VII

18 The decision of the department to issue a ground water permit for  
19 rates and quantities which would supply group domestic use of 17  
20 residences should be affirmed. If the water needed exceeds that  
21 allowed by permit, another application would appear to be necessary.

#### 22 VIII

23 Any Finding of Fact which should be deemed a Conclusion of Law is  
24 hereby adopted as such.

1 From these Conclusions the Board enters this

2 ORDER

3 Department of Ecology order that a permit to appropriate public  
4 ground water issued under application No. G4-27085 is affirmed.

5 DONE this 17<sup>th</sup> day of June, 1982.

6 POLLUTION CONTROL HEARINGS BOARD

7  
8 David Akana  
9 DAVID AKANA, Lawyer Member

10  
11 Gayle Rothrock  
12 GAYLE ROTHROCK, Vice Chairman